REMARKS/ARGUMENTS

Claims 1-27 are currently pending in the present application. The Examiner has rejected claims 11-27 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 1-9, 13 and 23 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Examiner has also rejected claims 10, 11, 13, 14, 17-19 and 26 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,771,661 to Chawla et al. Claims 15 and 16 have also been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Chawla in view of applicant admitted prior art. Claims 1-9, 12, 20-22, 25 and 27 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chawla in view of U.S. Patent No. 6,128,713 issued to Eisler et al. Claims 23 and 24 have also been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chawla and Eisler in further view of U.S. Patent Publ. No. 2002-0194326 to Gold et al.

As preliminary matter, Applicant has amended the specification to contain updated information concerning the patent application incorporated by reference herein. Namely, the specification has been amended to reflect that U.S. Application Ser. No. 09/198,090 has issued as U.S. Patent No. 6,412,000.

Applicant has amended claims 11-27 as suggested by the Examiner to overcome the rejection based on 35 U.S.C. § 101. Applicant has also amended claims 1-9, 13 and 23 to overcome the rejection under 35 U.S.C. § 112, second paragraph. As to claim 23, however, Applicant respectfully points out that the creating step enjoys antecedent basis from the creating step first identified in Claim 20 from which claim 23 depends. Accordingly, Applicant respectfully requests that the Examiner withdraw the instant rejection of claim 23.

As amended claim 10 now states:

10. (currently amended) An apparatus operable to dynamically allocate access to a network resource among a plurality of users, comprising:
  a partition management module operative to dynamically create partitions in response to new users; and,
  a partitioning mechanism operative to enforce the partitions to control access to a network resource among a plurality of users, wherein the partitions each define at least one parameter for managing aggregate bandwidth across all data flows corresponding to a given user.

Similarly, claim 1 has been amended to state that 'at least one user partition object [has] at least one attribute defining an allocation of a network resource across all data flows corresponding to a user.' Applicant has amended the remaining independent claims of the instant application in a similar manner. The claimed subject matter is directed to methods, apparatuses and systems that recognize new users of a network resource, and dynamically create partitions for the users that control utilization of the network resource across all data flows for each respective user in the aggregate. In other words, partitions are constructs for managing aggregate bandwidth across multiple flows.

The Chawla reference, alone or in combination with Eisler and/or Gold, does not disclose or suggest the subject matter of the amended claims. The Chawla reference discloses a system that reserves network bandwidth for a given data flow, stream or session. The Chawla reference describes sending RSVP messages from an external source to specify bandwidth requirements for specific flows. For example, the Chawla reference discloses the use of a Tspec field 191 in a data flow to allow the network device in the path to associate it with a bandwidth allocation. Therefore, unlike the present invention, the Chawla reference teaches that the bandwidth allocations apply to a given flow, data stream or session, whereas the present invention is directed to dynamically allocating network resources to users on an aggregate basis across all data flows associated with each user. None of the cited references provides a mechanism that achieves or suggests the claimed subject matter. Furthermore, the Examiner's contention that the detection of new users, and the dynamic creation of partitions in response, would have been obvious to one of ordinary skill in the art is not well taken. The events described in Chawla have no relation to detection of new users. Rather, Chawla teaches sending RSVP messages from an external source to specify bandwidth requirements for specific flows. In addition, as discussed above, Chawla provides no teaching or suggestion of applying aggregate allocations across all data flows corresponding to individual users.

As to claim 26 and paragraph 18 of the Office Action, the cited passage of Chawla does not support the rejection. As claim 26 states, a traffic classification is associated with a data flow. The traffic classification in turn influences the parameters of the user partition applied to the flow. The passage in Chawla cited by the Examiner merely discusses recognizing individual

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data flows in the packets that traverse the network and does not disclose classification of the data flows.

Furthermore, the rejection of claims 1-9, 12, 20-22, 25 and 27 is inappropriate. In addition, the Examiner has failed to establish a prima facie case as the Examiner has not alleged a sufficient motivation or suggestion to combine the references. Still further, even assuming the combination is appropriate, it does not disclose or suggest the claimed invention. Specifically, in addition to the reasoning set forth above with respect to Chawla, the Eisler reference discloses a method that frees more physical memory by swapping the least recently used pages to secondary storage. This does not disclose or suggest the subject matter of claim 12, for example, as it states that a partition is reclaimed for a subsequent new user.

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that any further action by Applicant is necessary to place this application in condition for allowance, Applicants request a telephone conference with the undersigned at the telephone number set forth below.

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Respectfully Submitted,
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